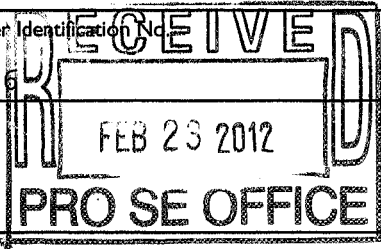


12 CIV. 1420

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court for the Southern District of New York

Name	Prisoner Identification No.	
D'Juan Collins	08A4646	
Place of Confinement		
Fishkill Correctional Facility Box 1245 Beacon, N.Y. 12508		
Name of Petitioner (include name under which convicted)	Name of Respondent (warden or superintendent of your prison)	
D'Juan Collins	William J. Connolly	
v.		

PETITION

- Name and location of court which entered the judgment of conviction under attack N.Y. Supreme Court,
111 Centre St., Judge Rena Uviller on Suppression Hearing; Judge Lewis
Bart Stone on jury trial
 - Name and address of lawyer who represented you Pro Se on Suppression Hearing and trial;
Patrick Megaro Esq at sentence and direct appeal, 626 RXR Plaza, 6th flr.
West Tower, Uniondale, N.Y. 11556;
 - Date of judgment of conviction August 15, 2008
 - Length of sentence 8 years and 3 years Post Release Supervision
 - Nature of offense involved (all counts) criminal sale in 3rd degree PL.220.39(1);
criminal possession of a controlled substance in 3rd degree PL. 220.16(1);
criminal possession of a controlled substance in 5th degree PL. 220.06(5)
 - What was your plea? (Check one)

(a) Not guilty	<input checked="" type="checkbox"/>
(b) Guilty	<input type="checkbox"/>
(c) Nolo contendere	<input type="checkbox"/>
- If you entered a guilty plea to one count of indictment, and not a guilty plea to another count of indictment, give details:

NOT APPLICABLE

- If you pleaded not guilty, what kind of trial did you have? (Check one)

7. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☒ ~~xx~~
(b) Judge only ☐

8. Did you testify at the trial?

Yes ☒ No ☐

9. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

10. If you did appeal, answer the following:

(a) Name of court First Department Appellate Division

(b) Name and address of lawyer who represented you

Patrick Megaro Esq. on main brief; Pro Se Supplemental Brief
626 RXR Plaza, 6th flr. West Tower, Uniondale, N.Y. 11556

(c) Result affirmed (see exhibit A)

(d) Date of result and citation, if known October 5, 2010

(e) Grounds raised Pro Se Supplemental Brief- Ineffective Assistance of

counsel; Denied due process rights to a "full & fair hearing" session
(see exhibit B) attached

(f) If you sought further review of the decision by appeal to a higher state court, please answer the following:

(1) Name of court N.Y. Court of Appeals

(2) Name and address of lawyer who represented you Pro Se on leave letter (see exhibit C)

(3) Result No question of law that ought to be reviewed (exhibit D)

(4) Date of result and citation, if known February 24, 2011

(5) Grounds raised Ineffective assistance of counsel; Whether due process

rights were violated during suppression hearing...which worked to

deprive petitioner of his 4th Amend claim and contrary to clearly
established statutory mandates and state and federal precedents;

(see exhibit C) hearing court failed to make impartial & adequate factual findings and
conclusions of law

(g) If you filed a petition for Writ of Certiorari in the United States Supreme Court, please provide the date the petition was filed and the date of result and citation, if known

Not applicable

(1) Name and address of lawyer who represented you Not applicable

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

12. If your answer to 11 was "yes," give the following information:

(a) (1) Name of court First Department Appellate Division

(2) Name and address of lawyer who represented you Pro Se

(3) Nature of proceeding motions filed in direct appeal

(3) Grounds raised Relieved of unauthorized stipulations; motion to strike

A.D.A. brief/portions; motion to relieve counsel with cause

(see record on direct appeal)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Date motion was filed with the Court unknown

(6) Date and result of motion April 6, 2010 (see exhibit E)

(b) As to any second petition, application or motion give the same information:

(1) Name of court Not applicable

(2) Name and address of lawyer who represented you Not applicable

(3) Nature of proceeding Not applicable

(4) Grounds raised Not applicable

(5) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(6) Date motion was filed with the Court Not applicable

(7) Date and result of motion Not applicalble

(c) Did you appeal to the highest state court having jurisdiction the decision on any petition, application or motion?

- (1) First petition, etc. Yes ☐ No ☒
 (2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

This petitioner was overwhelmed with litigation, and was
also back -n- forth to Riker's Island in a Family Court
proceeding to terminate my parental rights to my now 5yr old
son, and therefore, was under a lot of stress, which is not
not good for my chronic illness of A.I.D.S. (see sentence
minutes on record)

13. **STATE EVERY GROUND ON WHICH YOU CLAIM THAT YOU ARE BEING HELD UNLAWFULLY . EACH GROUND SHOULD BE SET FORTH UNDER A SEPARATELY NUMBERED PARAGRAPH . IF YOU ARE RAISING THE SAME GROUNDS THAT YOU RAISED ON DIRECT APPEAL , YOU SHOULD ATTACH A COPY OF YOUR STATE COURT APPELLATE BRIEF OR ITS TABLE OF CONTENTS . YOU MUST EXHAUST YOUR STATE COURT REMEDIES ON EACH GROUND YOU ARE CLAIMING YOU ARE BEING HELD UNLAWFULLY .**

Ground(s):

Point I- Denied a full and fair hearing in which to litigate
my 4th Amend claim, where the hearing court failed to reach
the merits of my claim and failed to make an inquiry into
my 4th Amend. claim. (see exhibit F)

Point II- Counsel was ineffective having not consulted with
me prior to suppression hearing, except for a period out of
time allotted by hearing court. (see exhibit F)

Point III- HEARING COURT FAILED TO MAKE IMPARTIAL AND ADEQUATE
FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATING TO THE
STRIP SEARCH CONDUCTED 1 hour or so later AFTER ARREST

(attach additional papers as necessary)

14. **TIMELINESS OF PETITION:** If your judgment of conviction was made final over one-year ago, you must set forth below why the one-year statute of limitations as codified in 28 U.S.C. § 2244(d) does not bar your petition.*

Petition is timely filed with the statute of limitations of
1 year.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as codified in 28 U.S.C. § 2244(d) provides in part that:

(I) A 1- year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of --

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court and made

retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

15. Do you have a petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐ No ☒

(a) If so, give the name and location of court in which the petition or appeal is pending Not applicable

16. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: Not applicable

(b) Give date and length of the above sentence: Not applicable

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

February 18, 2012
(date)

D'Juan Collier
Signature of Petitioner

#08A4646

Fishkill Inmate Number
Box 1245 Corr. Facility
Beacon, N.Y. 12508
Address

I declare under penalty of perjury that on February 20, 2012, I delivered this petition to prison authorities to be
(date)

mailed to the United States District Court for the Southern District of New York.

D'Juan Collier
Signature of Petitioner

EXHIBIT: A

Saxe, J.P., Nardelli, McGuire, Freedman, Abdus-Salaam, JJ.

3287 The People of the State of New York, Ind. 5529/07
 Respondent,

-against-

D'Juan Collins,
Defendant-Appellant.

Patrick Michael Megaro, Hempstead, for appellant.

D'Juan Collins, appellant pro se.

Robert M. Morgenthau, District Attorney, New York (Olivia Sohmer of counsel), for respondent.

Judgment, Supreme Court, New York County (Rena K. Uviller, J. at hearings and waiver of counsel; Lewis Bart Stone, J. at jury trial and sentence), rendered August 15, 2008, convicting defendant of criminal possession of a controlled substance in the third and fifth degrees, and sentencing him, as a second felony drug offender whose prior felony conviction was a violent felony, to an aggregate term of 8 years, unanimously affirmed.

Before permitting defendant to waive his right to counsel, the hearing court conducted a thorough inquiry, ensuring that defendant was aware of the disadvantages and risks of representing himself and of the important role of a lawyer (see *People v Arroyo*, 98 NY2d 101 [2002]; *People v Smith*, 92 NY2d 516, 520 [1998])). Moreover, even though defendant had no right to

hybrid representation (see *People v Rodriguez*, 95 NY2d 497, 501 [2000]), the court permitted defense counsel to remain as a legal advisor and to conduct portions of the trial. There is nothing in the record to indicate that the court should have inquired into defendant's mental condition. To the extent that defendant is arguing that he had insufficient time to consult with counsel before deciding to represent himself, that counsel was unprepared, or that the court should have assigned new counsel, those contentions are without merit.

The trial court did not shift the burden of proof when, during defendant's pro se cross-examination of a detective, it admonished defendant to stop making unsworn statements of fact based on his asserted personal knowledge. Defendant was not entitled to use his pro se status to violate rules of evidence and procedure (see *Faretta v California*, 422 US at 834, n 46). The court's admonitions were responsive to defendant's attempt to be an unsworn witness, and were not prejudicial. Even if the jury understood the court to have suggested, while addressing defendant in the jury's presence, that defendant would be testifying, any error was harmless in view of the court's thorough instructions to the jury on the burden of proof. Moreover, defendant did testify.

Defendant's challenges to the constitutionality of the court's interested witness charge are unpreserved and we decline

to review them in the interest of justice. As an alternative holding, we also find there was no constitutional deficiency in the charge (see *Reagan v United States*, 157 US 301, 305-311 [1895]; *Hicks v United States*, 150 US 442, 451-52 [1893]; *People v Blake*, 39 AD3d 402, 403 [2007], lv denied 9 NY3d 873 [2007]).

We have considered and rejected the claims contained in defendant's pro se supplemental brief.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 5, 2010


CLERK

EXHIBIT: B

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Argument	
Point I- Counsel for Defendant-Appellant was ineffective by having only consulted with Defendant-Appellant for 1 hour and 20mins. throughout his appointment of Defendant- Appellant's case, prior to suppression hearing depriving Defendant-Appellant of his U.S. Const. 6th, 14th amend.; N.Y. Const. art. 1 §6, 1 §12	8
Point II- Defendant-Appellant was deprived of his "due process" rights to a full and fair hearing in which to litigate Defendant-Appellant's 4th amend. claim, thereby depriving Defendant- Appellant of his U.S. Const. 4th, 14th; N.Y. Const. art. 1 §6, 1 §12	16
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EXHIBIT: C

October 28, 2010

D'Juan Collins #08A4646
Fishkill Corr. Facility
Box 1245
Beacon, N.Y. 12508

Hon. Jonathan Lippman
Chief Judge, Court of Appeals
Court of Appeals Hall
20 Eagle St.
Albany, N.Y. 12207

Attn: Clerk, Stuart M. Cohen

People v. Collins

New York County
Ind. No. 5529/07

Dear Judge J. Lippman,

Pursuant to Criminal Procedure Law §460.20(1),(2)(a)(i);
(3)(b);(4), defendant-appellant, proceeding pro se am submitting
this letter seeking permission to appeal to the Court of
Appeals in the above case, from an order of the Appellate
Division, First Department, affirming the judgment of
conviction, of the New York Supreme Court, without opinion
on appellant's pro se supplemental brief, on October 5, 2010.
(see attached: Decision & Order, dated October 5, 2010)

On August 15, 2008, appellant was convicted of criminal
possession of a controlled substance in the third degree, with
intent to sale and in the fifth degree, criminal sale of a
controlled substance in the third degree, was dismissed, due to
the jury being hung on that count and a partial verdict
rendered over objection by appellant.

Appellant was sentenced as a second felony drug offender
with a prior violent felony, to an aggregate term of 8 years,
and 3 years post release supervision.

I am enclosing copies of the A.D.A. Olivia Sohmer's
answering brief and appellant's pro se supplemental brief that
was filed in the Appellate Division First Department, motions

were also filed in connection with the above case, but will not be submitted at this time, appellant respectfully request that a reservation of right to submit such motions at a later time, should leave to appeal be granted.

No application for the same relief has been addressed to a justice of the Appellate Division or any other court.

Appellant respectfully request for a oral hearing on the application in person or by telephone conference.

Appellant contends that there exist questions of law that ought to be reviewed by the Court of Appeals, which were raised in the court below, those issues are as follows:

1. Whether counsel's only consultation with appellant that occurred for a period , out of an hour and twenty minutes, upon adjournment of the suppression hearing, prior to appellant's waiver of counsel, fell below the standards of both state and federal precedents, thereby depriving appellant of his right to have assistance of counsel, thereby depriving appellant of his due process rights, in violation of N.Y. State Constitution Article 1 §6; U.S. Constitution 6th and 14th Amendment; People v. Baldi, 54 N.Y.2d 137, (1981), (see also, People v. Henry, 95 N.Y.2d 563, 566, (2000)); Washington v. Strickland, 466 U.S. 668,691, (1984) (see Point I Pro Se Brief)
2. Whether appellant's due process rights were violated during the suppression hearing, where cumulative and/or fundamental errors occurred, which further worked to deprive appellant of his 4th amendment claim and motion to suppress certain evidence, to wit "crack" cocaine being denied, in violation of N.Y. State Constitution Article 1 §§6,12; U.S. Constitution 4th and 14th Amendment and contrary to clearly established statutory mandates and state and federal precedents. (see Point II and subpts. of Pro Se Brief)

- A. Whether the A.D.A. deprived appellant of his due process rights, when the A.D.A. failed in their function as a prosecutor to stimulate efforts for remedial action to return appellant to his status quo, when the A.D.A. knew or should've known of of the police conduct in conducting a warrantless, visual cavity search upon appellant, not incident to arrest, nor exception to the warrant requirement was present, which appellant contends was unlawful, which further worked to deprive appellant of his 4th amendment and whether the A.D.A. failed to establish their burden in going forward by failing to establish the legality of police conduct in conducting a warrantless, visual cavity search and whether the A.D.A. improperly shifted the burden to appellant to prove the illegality of the police conduct, in violation of N.Y. State Constitution Article 1 §§6,12; U.S. Constitution 4th and 14th Amendment; and contrary to state precedent, People v. Malinsky, 15 N.Y.2d 86, 91 n.2, (Ct.App. 1965); Stoner v. California, 376 U.S. 483, 486, (1964); (cf. Roberts v. St. Francis Hospital, 96 A.D.2d 272, 718, (A.D. 3 Dept. 1983); ABA Standards for Criminal Justice Prosecutor Function standard 3-1.2 (c)(d)
- B. Whether appellant raised a presumption that a search warrant was needed to conduct a visual cavity search not incident to arrest nor exception to the warrant requirement was present, if so, whether the A.D.A. failed to overcome appellant's presumption, if so whether appellant's due process rights were violated when the hearing court denied appellant's motion to to suppress evidence, to wit, "crack" cocaine, thereby depriving appellant of his 4th amendment

right, when appellant's presumption was deemed as a substantive rule of law, expressed in the rules of evidence, that a search warrant was in fact needed to conduct a visual cavity search, not incident to arrest, nor was an exception to the warrant requirement present. N.Y. State Constitution Article 1 §§6,12; U.S. Constitution 4th and 14th Amendment; Prince Richardson on Evidence, 10th Ed. §57

- C. Whether the hearing court failed to make impartial and adequate findings of fact, regarding the warrantless, visual cavity search, not incident to arrest, nor exception to warrant requirement was presented in the hearing court below, and whether the hearing court failed to make any conclusions of law, and whether the hearing court failed to state it's reason for it's determination, in accord with statutory mandates of Criminal Procedure Law §710.60 (4)(6); and N.Y. State Constitution Article 1 §6; U.S. Constitution 14th Amendment
- D. Whether appellant was denied a full and fair hearing in which to litigate appellant's 4th amendment claim, where the hearing court failed to reach the merits of appellant's 4th amendment claim, which was tendered by appellant, nor did the hearing court make any inquiry into appellant's 4th amendment claim, in violation of N.Y. Constitution Article 1 §§6,12; U.S. Constitution 4th and 14th Amendment; and contrary to clearly established federal precedent, Stone v. Powell, 428 U.S. 465, 489-495 n.36 (1976); (cf. Townsend v. Sain, 372 U.S. 293, 313-314 (1963))

E. Whether the hearing court failed to be watchful for any stealthy encroachments of appellant's constitutional rights, by failing to accord appellant judicial due process, in light of the cumulative and/or fundamental errors that occurred throughout the mode of proceedings, and has tainted the entire criminal process, and undermines the integrity of the judicial process and is contrary to the fundamental principles of due process and clearly established federal precedent.

N.Y. Constitution Article 1 §§6,12; U.S. Constitution 4th and 14th Amendment; Mapp v. Ohio, 367 U.S. 643, 647-648, (1961)

3. Whether it was error or an abuse of discretion as a matter of law of the court below, after had considered appellant's pro se supplemental brief (PSSB) then reject appellant's PSSB in it's entirety, given the above issues raised herein. N.Y. State Constitution Article 1§6; U.S. Constitution 14th Amendment

This letter constitutes my full leave application, though appellant states that there were pro se motions filed in connection with appeal on the record of appeal, but due to appellant's indigency can't make the necessary copies and added postage that would be needed, and therefore appellant respectfully request a reservation of right to present the rest of the record at a later or time, or that the court obtain the full record on appeal for review.

Appellant respectfully request, that this court advise appellant of the judge designated to decide this application.

In addition, appellant respectfully request a copy of of this court's rules and any all pertinent documents, needed to effectuate the appeal, should it be granted, thanking you in advance, for your cooperation and time in this matter.

cc: District Attorney
Cyrus Vance Jr.
1 Hogan Pl.
N.Y., N.Y. 10013

Respectfully submitted,
D'Juan Collins
D'Juan Collins #08A4646

EXHIBIT: D

State of New York

Court of Appeals

BEFORE: HON. CARMEN BEAUCHAMP CIPARICK,
Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-


D'JUAN COLLINS,

Appellant.

**CERTIFICATE
DENYING
LEAVE**

I, CARMEN BEAUCHAMP CIPARICK, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that upon application timely made by the above-named appellant for a certificate pursuant to CPL 460.20 and upon the record and proceedings herein,* there is no question of law presented which ought to be reviewed by the Court of Appeals and permission is hereby denied.

Dated: February 24, 2011
at New York, New York


Associate Judge

* **Description of Order:** Order of the Appellate Division, First Judicial Department, entered October 5, 2010, affirming a judgment of the Supreme Court, New York County, rendered August 15, 2008.

EXHIBIT: E

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 6, 2010.

Present: Hon. Angela M. Mazzarelli,	Justice Presiding,
David B. Saxe	
Eugene Nardelli	
Sheila Abdus-Salaam	
Nelson S. Román,	Justices.

-----X
The People of the State of New York,

Respondent,

-against-

M-10

M-387

M-422

Index No. 5529/07

D'Juan Collins,

Defendant-Appellant.

-----X

An appeal having been taken from the judgment of the Supreme Court, New York County, rendered on or about August 15, 2008,

And an order of this Court having been entered on June 23, 2009 (M-2437), inter alia, granting defendant leave to file a pro se supplemental brief in connection with the aforesaid appeal,

And defendant having moved for an order extending the time in which to file a pro se supplemental reply brief (M-10),

And defendant having moved for an order relieving retained appellate counsel and striking certain portions of the People's brief (M-387),

And retained counsel Patrick Michael Megaro, Esq. having moved to be relieved from representation of defendant (M-422),

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

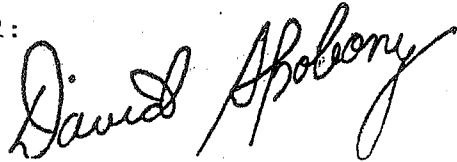
(M-10/M-387/M-422)

-2-

April 6, 2010

It is ordered that motion (M-10) is granted to the extent of directing defendant to serve and file 10 copies of his pro se supplemental reply brief on or before July 12, 2010 for the September 2010 Term, to which Term the appeal is adjourned. The appeal will not be heard unless and until all material furnished to appellant have been returned. So much of appellant's motion (M-387) which seeks to relieve retained counsel is denied, as unnecessary, and so much thereof which seeks to strike portions of the People's brief is denied. Retained counsel's motion to be relieved (M-422) is denied, as unnecessary. (See M-5766, decided simultaneously herewith.)

ENTER:

A handwritten signature in black ink, appearing to read "David Apobony". The signature is written in a cursive, flowing style with a long, sweeping tail.

Clerk.

EXHIBIT: F

LIBRARY

1 SUPREME COURT NEW YORK COUNTY
2 TRIAL TERM PART 72

3 THE PEOPLE OF THE STATE OF NEW YORK: INDICTMENT #
4 : 5529-07

5 AGAINST : CHARGE:
6 DJUAN COLLINS, : CSCS
7 Defendant. :

8 -----x Hearings

9 100 Centre Street
10 New York, New York 10013
11 May 20, 2008

12 B E F O R E:

13 HONORABLE RENA UVILLER,
14 Justice of the Supreme Court

15 A P P E A R A N C E S:

16 For the People: ROBERT MORGENTHAU ESQ.,
17 New York County District Attorney
18 One Hogan Place
19 New York, New York 10013
20 BY: JOSEPH PERRY,
21 Assistant District Attorney

22 DJUAN COLLINS, PRO SE

23 HERSHEL KATZ, ESQ.
24 LEGAL ADVISOR
25 100 Lafayette Street
New York, New York

IX
Mitchell Whitelaw
Senior Court Reporter, CSR, CRR

Colloquy

1 years post-release supervision and waiver of
2 appeal.

3 THE COURT: This is four and a half?

4 MR. PERRY: Yes.

5 THE COURT: Mr. Collins, here is the
6 story. You want the plea, you have it. If
7 you don't, it's withdrawn and we start the
8 hearing right now. So talk to your lawyer and
9 tell me what you want to do.

10 (At which time the defense counsel
11 confers with the defendant.)

12 THE COURT: Do we have a plea or not?
13 Are we ready to go?

14 (At which time the defense counsel
15 confers with the defendant.)

16 THE DEFENDANT: Your Honor--

17 THE COURT: No, I want to know whether
18 there is plea or not. We are ready to try the
19 case. I see from the file that this is the
20 third attorney and we are ready to go. Do you
21 wish to plead, tell your lawyer.

22 (At which time the defense counsel
23 confers with the defendant.)

24 (Pause in the proceedings)

25 THE COURT: Yes or no, do you wish to

Colloquy

1 plead, Mr. Collins? This case has been
2 pending a long time. I gather this is the
3 third attorney. The case is trial ready and we
4 are going now. Do you wish the plea? If you
5 don't want it, that is perfectly fine, and I am
6 happy to give you a hearing and trial. Yes or
7 no. That's the end, what do you wish?

8 THE DEFENDANT: Your Honor, in all
9 fairness, please, I have not had a chance to
10 even discuss my case with my attorney on May
11 1st. We were suppose to sit down and talk
12 about my case and about a defense.

13 THE COURT: Mr. Katz, have you
14 discussed the case with him?

15 MR. KATZ: Judge, on that date I tried
16 to see him. The pens were filled at the
17 time. I was informed later on when he became
18 available, I would speak to him. He raised
19 issues again that he had with his previous
20 counsel, about wanting to see the actual
21 signature on the grand jury minutes.

22 He also said he didn't threaten his
23 previous attorneys, and I spoke to them. It
24 may not be true, but in any event, I tried to
25 discuss what his defense will be. As The Court

Colloquy

1 knows, I tried literally hundreds of buy and
2 bust cases.

3 THE COURT: I'm not interested in the
4 history. This is his third attorney. Have you
5 all the Rosario?

6 MR. KATZ: Yes, and I reviewed it. I
7 had it for at least close to a month now. I
8 reviewed it thoroughly.

9 THE COURT: Call the witness:

10 THE DEFENDANT: Your Honor--

11 THE COURT: Call the witness. We are
12 ready to go. This is the third lawyer. We
13 are going forward now. Once the officer comes
14 in, the offer is gone. So, you tell me right
15 now, Mr. Collins.

16 THE DEFENDANT: Your Honor, he
17 hasn't talked to me about a possible defense.
18 I can't go to trial with this attorney.

19 THE COURT: Would you please tell me
20 what the history is in this case in terms of
21 attorneys?

22 MR. PERRY: This is the third
23 attorney appointed for the defendant. This
24 case began in October of 2007. Legal Aid at
25 the Criminal Court arraignment was assigned.

Colloquy

1 That attorney was Candace Kurtz. She
2 represented the defendant at the Supreme Court
3 arraignment in Part 81, and a motion schedule
4 was set by the judge.

5 On the decision date, Miss Kurtz made
6 aware to the calendar Judge, Judge Scherer,
7 that the defendant had been threatening her,
8 and during an off calendar discussion about the
9 case, and, in fact, when the case was put over
10 for hearing and trial, Miss Kurtz did not go to
11 court because she felt she would be
12 threatened. A stand in Legal Aid attorney
13 named Thomas Klein stood on Miss Kurtz's behalf
14 and explained to Judge Scherer the
15 circumstances.

16 She relieved Miss Kurtz on that day
17 and the case was put over for an 18B attorney
18 to be assigned. That attorney was Sema Ayer.
19 She took over the case. I gave her all the
20 materials in advance so that she could have
21 discussions with Mr. Collins.

22 The case was then-- I was ready for
23 trial on March 7th of this year. Judge Scherer
24 sent it out to Part 95, Judge Conviser. We
25 were about to commence the hearing after an

Colloquy

1 offer was not taken at that point, and then in
2 open court it was clear that the defendant was
3 physically threatening Miss Ayer. Judge
4 Conviser, it was in the morning, sent the
5 defendant to the back and the case was recalled
6 at 2:15.

7 We had a discussion with Judge
8 Conviser, and in his discretion he decided to
9 relieve Miss Ayer and then the case was put
10 back in the calendar part, Part 81, at which
11 point Judge Shcerer assigned Mr. Katz. So
12 I've seen it as well as heard about it from the
13 two lawyers.

14 THE COURT: There will be no change of
15 attorneys. Now, you say you want to talk to
16 him about your defense. You have until
17 2:00. It is twenty to one now, and at 2:00
18 the officer is going to walk in-- And your
19 officers are here?

20 MR. PERRY: Yes.

21 THE COURT: Once the officers come in
22 and take that stand, the offer is gone. You
23 will talk to him at 2:00 and I'm telling you,
24 Mr. Collins, you are not getting a different
25 attorney under any circumstances. I will see

Colloquy

1 you at two p.m..

2 THE DEFENDANT: In all fairness--

3 THE COURT: Two p.m., thank you.

4 THE DEFENDANT: All right.

5 THE CLERK: The case is adjourned.

6 THE DEFENDANT: Thank you, Your
7 Honor.

8 THE COURT: Mr. Katz, you want to
9 speak to him now?

10 MR. KATZ: No.

11 THE COURT: Tell me where you can talk
12 to him?

13 MR. KATZ: I'll go through Corrections
14 through the first floor, so I don't have to
15 worry about being locked in the courtroom.

16 THE COURT: When will you do it?

17 MR. KATZ: I'll do it now.

18 THE COURT: If he doesn't want to
19 speak to you, he will go without speaking to
20 you.

21 THE DEFENDANT: That's all I want to
22 do is speak to him and want a fair trial.

23 (At which time the hearing adjourned
24 until 2:00 p.m.)

25 A F T E R N O O N S E S S I O N

1 THE COURT: This is a recall of the
2 People vs Collins a continued hearing. The
3 appearances were previously noted. Is there a
4 plea or not?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Let's bring in the
7 witness.

8 THE DEFENDANT: Excuse me, Your
9 Honor.

10 THE COURT: Bring in the witness.

11 THE DEFENDANT: I suggested to my
12 attorney I wanted to proceed pro se.

13 THE COURT: Let me say this to you,
14 Mr. Collins, have you been to trial before?

15 THE DEFENDANT: Yes, I have, Your
16 Honor.

17 THE COURT: Have you represented
18 yourself?

19 THE DEFENDANT: That I have not,
20 Your Honor.

21 THE COURT: How far did you go in
22 school?

23 THE DEFENDANT: I have some
24 para-legal experience and I have a G.E.D., Your
25 Honor.

Tullo-People-Cross

1 from our supervisor and a photocopy is made by
2 the arresting officer. The arresting officer
3 then copies a photocopy of that to determine
4 later if any money recovered from the defendant
5 is pre-recorded buy money.

6 Q. Okay, so, then the supervisor who issues
7 the money will also have the signature at the bottom
8 of the pre-recorded buy money to ensure it came from
9 the supervisor that he issued it, correct?

10 THE COURT: In other words, after the
11 money is xeroxed.

12 THE WITNESS: That is up to the
13 arresting officer which I wasn't. So, I really
14 don't have that knowledge of that day. I
15 wasn't the arresting officer.

16 Q. Did you personally hear the transmission
17 that was received?

18 A. You have to clarify that.

19 THE COURT: Did you hear any
20 transmissions regarding narcotics sales between
21 an undercover and Mr. Collins, did you
22 personally hear any transmissions?

23 THE WITNESS: No.

24 Q. So, you was acting on the strength of the
25 arresting officer's reliability, basically?

Tullo-People-Redirect

1 A. That's how it works when you are not the
2 arresting officer.

3 Q. Okay, so, okay. Okay, I guess have no
4 further questions, Your Honor.

5 THE COURT: Thank you. Anything else?

6 REDIRECT EXAMINATION

7 BY MR. PERRY:

8 Q. One question, officer. Were you
9 instructed to conduct this strip search of the
10 defendant?

11 A. Yes.

12 Q. Who instructed you to do that?

13 A. My supervisor.

14 Q. Who is your supervisor?

15 A. Sergeant Henry.

16 THE COURT: Thank you very much.

17 (WITNESS EXCUSED)

18 THE COURT: Any further witnesses by
19 the prosecution?

20 MR. PERRY: No Your Honor.

21 THE COURT: Any further witnesses?

22 MR. COLLINS: I don't have any
23 witnesses, Your Honor.

24 THE COURT: That is all right. Both
25 sides have rested. Mr. Collins, you want to

Argument

1 be heard on the motion? Do you wish to be
2 heard on the motion?

3 MR. COLLINS: On the motion?

4 THE COURT: The motion to suppress.

5 MR. COLLINS: Yes.

6 THE COURT: I'll hear you now.

7 MR. COLLINS: Okay, Your Honor, at
8 this time the People have failed to prove
9 probable cause for an arrest in that the
10 arresting officer and the undercover officer
11 stated, or the arresting officer stated that he
12 didn't have information of a positive buy as
13 far as the drugs is concerned, because the
14 field test wasn't conducted until 7:15, and
15 it's been his experience that sometimes in his
16 experience that fake drugs are bought, and they
17 had no basis for the conclusion for they
18 assuming a crime had been committed, Your
19 Honor.

20 And I would move to suppress also the
21 drugs, the alleged drugs that was received from
22 the defendant, and that it violates the
23 defendant's constitutional rights of the 4th
24 Amendment against illegal search and seizures,
25 which there was never evidence-- whenever

Mitchell Whitelaw
Senior Court Reporter, CSR, CRR

Argument

1 evidence comes into-- whenever-- Excuse me,
2 hold on for a second. I can't free style that.

3 THE COURT: You are doing very well.

4 (Whereupon, there was a pause in the
5 proceedings.)

6 MR. COLLINS: I would move to suppress
7 the physical evidence that was received in Wong
8 Son versus the United States. That Court has
9 held that evidence seized during an unlawful
10 search could not constitute proof against a
11 victim of a search, and that exclusionary
12 prohibition extends as well as to indirect and
13 a direct product of such invasions.

14 And also under Wong Son The Court
15 stated that all evidence which the product has
16 come at the exploitation of official misconduct
17 can have no independent source, if it is
18 independent and derived in violation of the
19 defendant's 4th Amendment rights. It must be
20 excluded no matter how reliable, if it is
21 directly traceable to or is casually related to
22 unlawful official behavior. This would include
23 the plastic bag also.

24 Even where there is a clear
25 indication that incriminating evidence will be

Argument

1 retrieved, if they violate intrusion, violate
2 bodily intrusion where permitted, a search
3 warrant is required absent the emergency for
4 such a search, to be permissible under the 4th
5 Amendment, Your Honor.

6 THE COURT: Counsel.

7 MR. PERRY: I would ask that The
8 Court find both Officer Slater and Officer
9 Tullo credible witnesses and experience members
10 of the New York City Police Department.

11 They testified before you, Your
12 Honor, in a straight forward manner. The case
13 law states that officers are entitled to rely
14 upon radio transmissions. Here Detective
15 Slater testified he received detailed
16 descriptions from both the ghost officer,
17 Undercover 29755, indicating the description of
18 the defendant, the location, where the
19 conversation between the defendant and the
20 primary undercover 7422 took place.

21 Detective Slater was entitled to rely
22 upon the observations of these officers. He
23 received radio communications both from the
24 undercover and the ghost officer of the
25 positive buy. For these reasons, I would ask

Argument

1 that The Court find that Detective Slater had
2 probable cause to arrest the defendant. The
3 arrest took place within five minutes of the
4 transaction. The defendant was located in the
5 same location at 2612 Broadway where the
6 transaction between the primary undercover and
7 the defendant took place.

8 It is the People's position there was
9 probable cause to make the arrest. I ask The
10 Court to find that the items recovered from the
11 defendant were searched incident to a lawful
12 arrest.

13 At the scene because of the
14 undercover indicating that a drug sale had
15 taken place, the arresting officer properly
16 searched the defendant and recovered not only
17 twenty dollars of pre-recorded buy money, but
18 as well eleven additional dollars in US
19 currency and two cellphones.

20 Further, Detective Slater did a pat
21 down of the defendant, and that pat down
22 revealed there was a plastic, something that he
23 felt that was plastic in the defendant's crotch
24 area which is consistent with the primary
25 undercover's testimony, or communication of

Argument

1 where the defendant had gone to reach into his
2 crotch area to give the primary undercover the
3 two twists of cocaine he asked for.

4 I ask The Court in addition to find
5 that the search at the scene-- at the precinct
6 was proper. Both officers testified that it's
7 not proper police procedure to conduct a strip
8 search of a defendant at a scene, and it was
9 proper for the police to wait to transport the
10 defendant to the precinct to conduct that
11 further search, so as not to violate the
12 defendant's privacy rights. I ask that the
13 motion be denied in all respects.

14 THE COURT: The following constitutes
15 the findings and conclusions of The Court:
16 Mr. Collins has been indicted for a felony drug
17 offense. He has moved to suppress contraband
18 found upon his person, as well as some currency
19 and some cellphones.

20 The hearing was held on this date.
21 I heard from Detective John Slater and Police
22 Officer Tullo, and based upon their credible
23 testimony I find that both officers are
24 experienced narcotics officers who have worked
25 in Manhattan Narcotics North for many years.

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Decision

1 On October 21st, 2007, they were part
2 of a buy and bust team which included the
3 primary undercover number 7422 and the
4 so-called ghost or secondary undercover,
5 29755. Detective Slater had worked with these
6 officers for a substantial period of time and
7 was familiar with their voices on the
8 transmitters.

9 At about 5:35 in the evening on the
10 date in question, Detective Slater who was
11 designated the arresting officer, received a
12 telephone communication from the Ghost 29755
13 advising that the primary undercover 7422 was
14 engaged in a conversation in front of 2612
15 Broadway, which is about 112th Street, and the
16 ghost communicated that the primary undercover,
17 the person to whom he was speaking, was
18 described as a male black between thirty-five
19 and forty years of age, approximately
20 five-foot-ten, approximately 160 pounds,
21 wearing a black bandana on his head, wearing a
22 white T-shirt and gray sweats with white
23 sneakers and glasses and wearing the bandana in
24 a so-called Tupac Shakur style.

25 Within two minutes he received a

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Decision

1 second communication, one on his point-to-point
2 radio from the ghost indicating a positive buy,
3 and also from the undercover on his Kel
4 indicating that there was a positive buy. And
5 in the experience of these officers that meant
6 a narcotics transaction has occurred.

7 Detective Slater was in his vehicle
8 on 97th Street and Broadway. He drove
9 immediately to the location near 112th Street,
10 and there he observed Mr. Collins who was the
11 only person fitting the description that came
12 over the Kel.

13 Detective Slater identified himself
14 as a police officer and handcuffed Mr.
15 Collins. Within a few minutes or more than
16 five, he received a communication on the
17 point-to-point from the primary undercover
18 indicating that it is a positive signifying
19 that the person arrested was the person from
20 whom he had purchased narcotics.

21 At that point the detective searched
22 or patted down Mr. Collins and retrieved
23 currency including twenty dollars in
24 pre-recorded buy money and two cellphones.
25 During the course of the pat down he felt a

Decision

1 plastic semi soft object in Mr. Collins's groin
2 area. He did not search him at that point
3 because of the policy of the department, which
4 was that any search that was going to involve
5 invasion of the defendant's private body parts,
6 should not be done on the street.

7 The defendant was placed in the van,
8 and back at the precinct at about 7:15 or so
9 Officer Tullo conducted a strip search in the
10 privacy of the bathroom at the precinct, and in
11 the groin area he recovered a plastic bag
12 containing thirteen smaller so-called twists of
13 narcotics.

14 Based upon the foregoing, the search
15 was based upon probable cause. The officer,
16 the arresting officer was entitled to rely on
17 the communication of two experienced undercover
18 narcotics officers, that a purchase had been
19 made. The defendant fit the description and
20 was in the precise location at 2612 Broadway
21 that had been communicated to him.

22 His arrest was based upon probable
23 cause. Certainly the detention until the
24 primary undercover confirmed his identity, was
25 appropriate, and upon the confirmation by the

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Decision

1 primary undercover, the search was made and the
2 cellphones and the money were recovered
3 pursuant to that arrest, and the search at the
4 precinct later was appropriate under the
5 circumstances.

6 Accordingly, the motion to suppress
7 is denied and an exception is noted.

8 Mr. Collins, did pretty well as his
9 own lawyer, but facts are facts. So for now
10 this is going over till tomorrow. I have to
11 find a part for it tomorrow.

12 MR. KATZ: Can we schedule it for 9:30
13 or 11:00? I have to be in Brooklyn.

14 THE COURT: No later than 11:00.

15 MR. COLLINS: Your Honor, at this time
16 I would request to call witnesses on behalf of
17 the defense.

18 THE COURT: No, the hearing is
19 concluded. I asked you if you had any
20 witnesses and you said you did not.

21 MR. COLLINS: I just took the case
22 today, Your Honor.

23 THE COURT: I'm sorry, that's the
24 ruling. Okay, we will see you tomorrow
25 morning. We will find a part for you.

Mitchell Whitelaw
Senior Court Reporter, CSR, CRR

Decision

1 MR. COLLINS: Return back here or are
2 you sending--

3 THE COURT: We will send it out from
4 here.

5 MR. COLLINS: Oh, man.

6 MR. KATZ: Can the defendant get the
7 hearing minutes under 18B?

8 THE COURT: The defendant will get the
9 hearing minutes. You'll get the hearing
10 minutes free of charge.

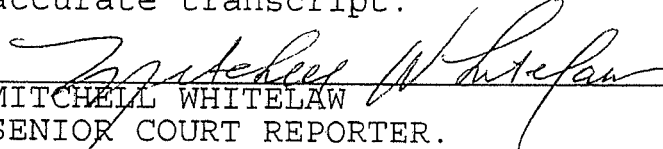
11 MR. COLLINS: Thank you.

12 (Case adjourned to May 21, 2008)

13 *****

14

15 I hereby ceritfy the foregoing to be a true and
16 accurate transcript.

17 
18 MITCHELL WHITELOW
19 SENIOR COURT REPORTER.

20

21

22

23

24

25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

D'Juan Collins

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

___ Civ. ___ () ()

- against -

William J. Connolly

AFFIRMATION OF SERVICE

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, D'JUAN COLLINS, declare under penalty of perjury that I have
(name)

served a copy of the attached Federal Habeas Corpus § 2254
(document you are serving)

upon clerk of court of S.D.N.Y. whose address is SDNY
(name of person served)

Daniel Patrick Monynihan, U.S. Courthouse, 500 Pearl St. N.Y., N.Y. 10007
(where you served document)

by first class mail
(how you served document: For example - personal delivery, mail, overnight express, etc.)

Dated: Beacon, NY
(town/city) (state)

February 20, 2012
(month) (day) (year)

D'Juan Collins

Signature
Fishkill Facility
Box 1245
Address

Beacon, NY.
City, State

12508
Zip Code

Telephone Number